IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2002

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THE HONOURABLE MR. JUSTICE P.K.MISRA

W.P.NO.112 OF 1997

The Management of
Railway Employees' Consumers
Co-operative Stores Limited
Coonoor 643 102 ..Petitioner

-Vs-

1. The Deputy Commissioner of Labour
(Appellate Authority under the
Tamil Nadu Shops and Establishments
Act)
Coimbatore 18

2.S.Mahalingam ..Respondents

Petition filed under Article 226 of The Constitution of India for the issue of writ of Certiorari as stated therein.

For petitioner : Mr.S.Ravindran
For respondent No.1 : Mr.P.S.Jayakumar, G.A.

For respondent No.2: Mr.D.Hariparanthaman

:ORDER

Heard the learned counsel appearing for the parties.
2.The management of the Railway Employees' Consumers Co-operative Stores Limited has filed this writ petition challenging the order of the first respondent – the appellate authority under the Tamil Nadu Shops and Establishments Act allowing the appeal filed by the second respondent. It had been alleged by the second respondent that he was working regularly, but temporarily under the present petitioner and suddenly he was orally asked not to come to the organisation for any work. In the objection filed before the appellate authority it was stated by the management that the second respondent was a casual worker and he had not worked for more than six months to enable him to approach the appellate authority under the Tamil Nadu Shops and

Establishments Act. The appellate authority accepting the case of the present second respondent allowed the appeal and set aside the "oral dispensation of the service." In this Court, there was an interim order of stay and subsequently, the order of stay was modified and there was a direction to pay Rs.500/- (Rupees Five Hundred only)per month to the second respondent. It is also seen from the records that at the time of granting interim stay, this Court has directed the Management to deposit Rs.5,000/-(Rupees Five Thousand only) which has been subsequently withdrawn by the second respondent. It is not disputed that in the mean time the petitioner has attained the age of superannuation.

3.The learned counsel appearing for the present petitioner submitted that the materials produced before the appellate authority were not sufficient to come to the conclusion and that in fact, the second respondent had been employed under the present petitioner for more than six months and therefore, the appellate authority had no jurisdiction to deal with the matter. He has further submitted that the burden of proving that the second respondent was employed under the present petitioner was on the workman and therefore the order passed by the management cannot be sustained.

4.Even though the aforesaid submission is, prima facie, attractive, I am unable to accept the said contention, keeping in view the limited scope of interference in the writ of Certiorari. Law is well settled while dealing with the writ of Certiorari the High Court does not sit as an appellate forum and only when the conclusion of the appellate authority is baseless or not supported by any evidence whatsoever, or is perverse, such a conclusion can be set aside and not otherwise.
5.In the present case, it is quite possible that another appellate authority might have taken a different view. But, it cannot be said that there was no material in support of the conclusion reached by the appellate authority. Therefore, the order of the appellate authority cannot be termed as perverse or as based on no evidence and I do not find any scope for interference with the conclusion of the appellate authority.

6.The learned counsel appearing for the petitioner then submitted that the petitioner is a Co-operative Stores Limited and the second respondent has reached superannuation in the meantime and during the period while the matter is pending before the High Court, after the order was passed by the appellate authority, the second respondent has not worked and he should not be paid the entire amount payable.

7.The said submission is resisted by the learned counsel for the second respondent on the ground that the second respondent was terminated from the work for no fault of his.

8.In the present case, as already noticed, some amount has been received by the second respondent by virtue of the order of the High Court and he has attained the age of superannuation in the mean time.

9.Considering the facts and circumstances of the case and keeping in view the financial interest of the petitioner and in the interests of justice,

I think it would be appropriate to give a direction that a further sum of Rs.30,000/-(Rupees Thirty Thousand only) would be paid by the petitioner to the second respondent towards all claims including past wages, gratuity, etc and the second respondent would not claim any further amount. This may be paid within a period of two months from today.

9.The writ petition is accordingly disposed of subject to the aforesaid direction. There will be no order as to costs.

18-09-2002

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internet:yes
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To
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